

DATE: February 4, 2002

TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: HEARING ON THE STATUS OF THE STATE DISCRIMINATION
COMPLAINT PROCESS

In compliance with Government Code Section 19702.5(c), the State Personnel Board (SPB) will hold a public hearing on March 5, 2002, to consider the staff's *Report on the Status of the State Discrimination Complaint Process*. The hearing will be held at 9:30 a.m., in Room 150, at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Those interested in providing oral testimony at the hearing should notify Judy Callahan, Office of Civil Rights, at (916) 653-1621, by March 4, 2002. Those wishing to provide written testimony may submit their comments to Ms. Callahan at the above address.

The report concluded that the state's discrimination complaint process is sound in principle, but its implementation by some departments is inconsistent and incomplete. It also concluded that the SPB needs to improve guidelines and training for departmental staff so that they may more effectively carry out the process. Attached is a list of the recommendations in the report for improving the process. Interested parties may access and download the complete report on the SPB's Web site at www.spb.ca.gov. A limited number of printed copies of the report are available from the SPB's Office of Civil Rights. To order a copy, call (916) 653-1579. In addition, a limited number of copies will be available at the hearing. Following the hearing, the five-member State Personnel Board will consider all information presented and forward its report with its final recommendations to the Legislature as required by statute.

If there are any questions about this matter, please contact either Ms. Callahan, at the above number, or Ted Edwards, Manager, Office of Civil Rights, at (916) 653-1276. All staff in the Office of Civil Rights may be reached by TDD at (916) 653-1498.

Walter Vaughn
Executive Officer

Attachment

-ABRIDGED VERSION-

REPORT ON THE STATUS OF THE STATE DISCRIMINATION COMPLAINT PROCESS

I. PURPOSE OF THE REPORT

Government Code Section 19702.5(c) requires the State Personnel Board (SPB) to hold a public hearing once every three years to assess the effectiveness, accessibility, and fairness of the state discrimination complaint process. The SPB is further required to report the results of the hearing, with recommendations for improving the process, to the Legislature within 90 days. To develop the information needed for the hearing, staff conducted a comprehensive review of departmental discrimination complaint policies and procedures, and has prepared this report on its findings and recommendations.

II. SUMMARY OF MAJOR FINDINGS

The state's discrimination complaint process is sound in principle, but its implementation by some departments is inconsistent and incomplete. Improvements are needed at the departmental level to better assure effectiveness, accessibility and fairness. In addition, the SPB needs to provide better guidelines and training to departmental staff to improve their ability to effectively carry out the process. These conclusions are based on the following major findings of this report:

- In calendar year 2000¹, state departments reported receiving 676 discrimination complaints filed by individuals, in which 1,103 multiple charges of discrimination were made. In addition, departments reported that employees filed 328 complaints with the Department of Fair Employment and Housing (DFEH), and 210 with the U.S. Equal Employment Opportunity Commission (EEOC). (See Table on pages 49-51)
- The greatest number of departmental discrimination complaints were received for Retaliation, 214 (19.4%); Sexual Harassment, 188 (17.0%); and Race, 182 (16.5%)

¹ Calendar year 2000 is the last year for which there is complete information on discrimination complaints.

- In calendar year 2000, 592 individual discrimination complaints were closed. Of those, departments made a specific finding in 355 (60.0%) and found discrimination had occurred in 54 (15.2%) cases.

- Calendar year 2000 is the last year for which there is complete information on discrimination complaints.
- In 2000, the SPB closed 136 appeals by employees of departmental decisions on their discrimination complaints. Of these, the SPB decided 55 cases (40.4%). Five of these appeals (8.6%) were granted by the SPB, 23 (39.7%) were settled by stipulation, and 27 (19.8%) were denied/dismissed. Other cases closed but not decided by the SPB included 42 (30.0%) that were withdrawn by the appellant; and 39 (28.7%) that were not accepted due to no grounds established, the SPB had no jurisdiction or the appeal was not timely.
- Departments are currently not tracking the amount of resources and the costs to respond to discrimination complaints. Partial information that the SPB was able to obtain from departments indicates that the cost in 1999-2000 was in excess of \$36.9 million.
- 40.6% of state employees surveyed indicated that they have confidence that their department treats discrimination complaints fairly.
- 57.3% of the departments surveyed indicated that their current director had issued a non-discrimination policy statement to departmental employees.
- 60.7% of the departments surveyed had issued written discrimination complaint procedures to their employees.
- 53.9% of the departments said they had an active informal discrimination complaint process to try to resolve complaints at the lowest level, with the least formality.
- Departments reported 924 informal complaints. Of those, 635 (68.7%) were resolved through the informal process.
- 48.3% of departments had offered mediation to employees as a method for resolving complaints. Departments reported 121 employees accepted mediation and 70 complaints (57.9%) were resolved through the process.
- 66.3% of departmental Equal Employment Opportunity (EEO) officers report to the directorate. The classification level of EEO officer positions range from staff services analyst to exempt.
- Overall, 43.0% of departmental investigations of discrimination complaints that were reviewed by staff appeared to be fully impartial and thorough, and the findings sound; 37.0% were found to have minor problems, and 20.0% had more serious problems.
- 31.0% of departmental discrimination complaint files were found to be complete; 49.0% were missing minor items; and 20.0% were missing major items.

- Many gaps and errors were found in discrimination complaint information reported to the SPB by departments. Some of the reasons appear to be inadequate tracking systems, insufficient resources/staff, departmental staff turnover, insufficient training, and lack of attention to the importance of the information.
- Seventy-six percent of the departments surveyed have provided some employment law training to supervisors and managers within the last three years.
- Sixty-six departments (74.2%) indicated that all their EEO investigators had completed the SPB's EEO Investigator Training Course or similar training, and 58 departments (65.2%) indicated that all their EEO counselors had completed the SPB's EEO Counselor Training Course or similar training.
- The training of departmental EEO office staff, and EEO counselors and investigators in employment and civil rights law, and in procedural requirements, is not uniform or consistent among all departments.
- Of departments surveyed, 85.3% indicated that they had provided sexual harassment training to all their managers and supervisors within the last three years, and 47.7% had provided reasonable accommodation training.
- In calendar years 1999 and 2000, 39 (28.7%) and 69 (43.9%) appeals of departmental decisions on discrimination complaints submitted to SPB, respectively, were rejected because appellants were not able to establish proper grounds for appeal, the SPB had no jurisdiction, or the appeal was not timely.
- In 2000, the average number of days to close an SPB discrimination complaint appeal was 163 days; however, the average number of days to close reasonable accommodation appeals was 247 days.

On-site reviews of departmental discrimination complaint processes motivated some departments to review and update their discrimination complaint processes without being required to do so by the SPB.

III. SUMMARY OF SPECIFIC RECOMMENDATIONS

The recommendations to improve the state's discrimination process are listed below. Recommendations are numbered in the order that they appear in this report. The discussion of the facts leading to each recommendation is located on the page indicated in parenthesis.

1. The SPB develop a regulation requiring departments to issue written non-discrimination policy statements to all their employees when first employed and at least once every three years thereafter. (Coordinate with recommendations #2 and #32.
2. Departments include definitions of the protected categories in their non-discrimination policy statements. (Coordinate with recommendations #1 and #32.

3. The SPB issue a reminder to departments of their legal obligation to display prominently the DFEH non-discrimination poster and to call employees' attention to it.
4. The SPB develop and distribute a poster informing state employees about the state discrimination complaint process and an employee's right to appeal to the SPB.
5. The SPB propose new legislation requiring that each appointing authority appoint an EEO officer who reports directly to the departmental director or chief deputy director and be independent of human resources and line programs.
6. The SPB propose new legislation to specify that the EEO officer is responsible for managing the departmental discrimination complaint process.
7. The SPB, in cooperation with the California Civil Rights Officers Council (CCROC) and the Department of Personnel Administration, review EEO officer positions to determine the appropriate classification level.
8. The SPB promulgate a regulation requiring departments to have at least one trained reasonable accommodation coordinator.
9. Departments ensure that their reasonable accommodation coordinators receive training on the reasonable accommodation provisions of both the Americans with Disabilities Act (ADA) and the Fair Employment and Housing Act (FEHA).
10. The SPB form a task force to explore the development of a new comprehensive basic EEO/non-discrimination law training program for state managers and supervisors.
11. The SPB follow-up with departments in 13 cases where discrimination was found to determine why no action was taken against the responsible party.
12. The SPB revise its quarterly discrimination complaint data collection process to require departments to explain the reason why no action is taken in cases where discrimination is found. (Coordinate with recommendation #33.)
13. The SPB promulgate a new regulation requiring departments to have written discrimination complaint procedures. (Coordinate with recommendations #14, #15, and #16)
14. The SPB develop a model written discrimination complaint procedure identifying essential elements that should be included in an effective procedure. (Coordinate with recommendations #13, #15, and #16)
15. The SPB review and approve current written departmental discrimination complaint procedures and subsequent revisions. (Coordinate with recommendations #13, #14, and #16)

16. The SPB promulgate a new regulation requiring departments to provide a copy of their discrimination complaint procedures to all new employees and to reissue the procedures to all employees every three years and to place their procedures on the departmental Web site. (Coordinate with recommendations #13, #14, and #15)
17. The SPB revise Regulation 54.2 to clarify and strengthen the requirement that departments have an effective informal discrimination complaint process.
18. Departments provide their employees with information on how to use the informal discrimination complaint process by complying with the new regulations proposed in recommendations #16 and #22.
19. The SPB develop criteria to assist departments in determining whether they have an adequate number of EEO counselors.
20. The SPB develop a regulation requiring that all EEO counselors be trained before being assigned counseling duties, and that they undergo refresher training every three years.
21. The SPB revise its EEO counselor training to provide greater emphasis on practical counseling and interviewing techniques.
22. The SPB develop a regulation requiring departments to prominently post the names and telephone numbers of their EEO counselors, distribute a written list of counselors to all employees, and post the list in a prominent place and/or on the departmental Web site. (Coordinate with recommendations #16 and #18)
23. Departments provide all their employees with a written description of the functions and services of their EEO office and the names and telephone numbers of the departmental EEO officer and staff.
24. The SPB develop criteria to assist departments in determining whether they have an adequate number of EEO investigators.
25. The SPB develop a regulation requiring that all EEO investigators be trained before being assigned investigative duties and that they undergo refresher training every three years.
26. The SPB revise its technical investigator training class to provide more emphasis on the practical aspects of conducting an investigation, including steps in the investigative process, interviewing techniques, and report writing.
27. The SPB, in cooperation with departmental EEO officers, explore how small departments can most effectively obtain needed resources to investigate discrimination complaints.

28. The SPB develop a regulation that sets forth the standards for opening and closing out a discrimination complaint investigation.
29. The SPB revise its regulations to include a time limit of 180 days for a department to complete a discrimination complaint investigation and issue a decision before an employee can appeal directly to the SPB.
30. SPB work with departments to develop guidelines on who may have access to departmental discrimination complainant files during and following investigations of complaints.
31. Departments organize and maintain their discrimination complaint files in accordance with SPB's EEO investigator training guidelines.
32. The SPB develop a regulation requiring departments to develop and distribute a policy statement prohibiting retaliation for use in the discrimination complaint process. (Coordinate with recommendations #1 and #2.)
33. The SPB implement recommendation #12 in order to more fully monitor actions/no action taken against those found by departments to have retaliated against another employee.
34. The SPB review its technical training course on reasonable accommodation to determine how it might be improved. The SPB should consider input from departmental EEO staff and reasonable accommodation coordinators for improving the course.
35. The SPB promulgate a regulation requiring that departments issue written reasonable accommodation procedures to all their employees.
36. The SPB require departments to include a provision for the interactive process, including who has responsibility for initiating the process, in their departmental reasonable accommodation procedures. (Coordinate with recommendations #37 and #39)
37. The SPB revise and reissue to departments its booklet Guide to Implementing Reasonable Accommodation and include information about the requirement for the interactive process. (Coordinate with recommendations #36 and #39)
38. The SPB revise Regulation 53.2 requiring departments to provide the employee with a final decision on his/her request within 20 days after receiving medical information from the employee's licensed health care practitioner.
39. In implementing the statutory requirement for an interactive process, departments ensure they keep employees informed about the status of their reasonable accommodation requests. (Coordinate with recommendations #36 and #37)

40. Departments ensure their written reasonable accommodation procedures include a provision for providing employees their appeal rights.
41. The SPB revise Regulation 53.2 to require that the EEO officer review all reasonable accommodation requests to ensure all legal requirements have been met before the department's final decision on the request.
42. The SPB and departments continue to broadly publicize mediation as a means for resolving discrimination complaints and encourage its use.
43. The SPB promulgate a new regulation requiring departments to track informal discrimination complaints and report them to the SPB on a quarterly basis.
44. The SPB promulgate a new regulation requiring departments to track formal discrimination complaints and report them to the SPB on a quarterly basis.
45. The SPB work to complete its automated, interactive, Internet-based discrimination complaint tracking system, and the SPB coordinate this effort with departmental efforts to improve tracking systems.
46. The SPB provide additional training to departmental staff regarding how to properly report discrimination complaint information to the SPB.
47. Departments review the adequacy of their resources for completing workload required by the SPB to prevent employment discrimination, provide equal employment opportunity, and to deal effectively with discrimination complaints, and develop any needed budget change proposal to obtain needed resources.
48. The SPB promulgate a new regulation mandating that departments report both informal and formal discrimination complaints and DFEH and EEOC complaints to the SPB on a quarterly basis.
49. The SPB change its reporting of discrimination complaint data from a calendar year basis to a fiscal year basis to be consistent with its reporting of other employment data.
50. The SPB conduct on-site reviews of the discrimination complaint process in a limited number of departments each year and provide feedback on what improvements are needed.
51. Departments include needed improvements to their discrimination complaint process in their EEO plan and see that they are implemented.
52. The SPB's Appeals Division management ensure that discrimination complaint appeals are identified by type of discrimination alleged and that this information is entered into the automated case tracking system.

53. The SPB's Appeals Division prepare quarterly reports on its decisions in discrimination complaint and reasonable accommodation appeals showing the disposition to facilitate monitoring by the SPB's Office of Civil Rights.
54. The SPB's Appeals Division investigate why discrimination complaint appeals, and in particular, reasonable accommodation appeals, take longer than 180 days to complete and identify ways to reduce time to close cases.
55. The SPB clarify, by statute or regulation, that statistical and other employment information needed to support a claim of discrimination is public information and that complainants must be granted access to this information when requested. Such information would include, but not be limited to, employment lists, bottom-line reports, and management information system reports.
56. The SPB develop a statutory requirement that departments track the costs associated with their discrimination complaint activity and report the information to the SPB annually.
57. The SPB's Appeals Division track the costs associated with department discrimination complaint activity and includes this information in their report to the Legislature.
58. The SPB include the costs associated with departmental discrimination complaint activity in its annual report to the Legislature.